

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN ROBERT WILSON; JACQUELINE  
WILSON,

Appellants,

v.

JPMORGAN CHASE BANK NA ET AL.

Appellees.

CASE NO.2:23-cv-01827-JHC

Bankruptcy No. 2:23-bk-10919  
2:23-ap-1073

ORDER AFFIRMING IN PART AND  
VACATING IN PART THE  
BANKRUPTCY COURT'S DECISIONS

**I**

**INTRODUCTION**

In this consolidated appeal, John Wilson (Wilson) and Jacqueline Wilson, appeal six orders of the bankruptcy court.<sup>1</sup> Four orders were issued in a bankruptcy proceeding: (1) the November 3, 2023, order overruling a debtor objection to the claim of JPMorgan Chase Bank, NA, 2:23-bk-10919 Dkt. # 89; (2) the November 17, 2023, order denying John Wilson's motion

---

<sup>1</sup> For ease of reference, this order, where appropriate, cites directly to the bankruptcy court's dockets. The Court takes judicial notice of any documents in the bankruptcy court's dockets that are not included in the records on appeal, 2:23-cv-01827 Dkt. # 1; 2:24-cv-00096 Dkt. # 1, the designations of records on appeal, 2:23-cv-01827 Dkt. # 8-1; 2:24-cv-00096 Dkt. # 12-1, and the appendices of the parties' briefs, 2:23-cv-01827 Dkt. ## 21-1; 22-1; 31-1; 31-2.

1 for reconsideration, *id.* at Dkt. # 100; (3) the November 27, 2023, order continuing the trustee's  
2 motion to dismiss, *id.* at Dkt. # 108; and (4) the December 22, 2023, ex parte order dismissing  
3 case, *id.* at Dkt. # 122. Two orders were issued in an adversary proceeding: (1) the December  
4 18, 2023, order granting in part and denying in part Chase's motion to dismiss first amended  
5 complaint and granting request for judicial notice in support of motion to dismiss, 2:23-ap-1073  
6 Dkt. # 44; and (2) the April 30, 2024, order granting JPMorgan Chase Bank, N.A.'s motion for  
7 summary judgment, *id.* at Dkt. # 100. Having considered the parties' briefs, the record, and the  
8 applicable law, the Court, being fully advised, DISMISSES in part the appeal. The Court  
9 AFFIRMS in part and VACATES in part the bankruptcy court's decisions and REMANDS for  
10 further proceedings consistent with this order.

## 11 II

### 12 BACKGROUND

13 The parties do not dispute these facts:

14 On April 22, 2005, the Wilsons refinanced a loan on their property with Washington  
15 Mutual Bank. Specifically, the Wilsons took out a loan of \$567,000 and executed a promissory  
16 note and deed of trust, which were later acquired by JPMorgan Chase Bank (Chase). Starting  
17 around January 2011, the Wilsons stopped making payments on the loan. In October 2012,  
18 Chase appointed Quality Loan Services Corporation of Washington (Quality) as successor  
19 trustee. On October 17, 2012, Quality issued a notice of default and sought a nonjudicial  
20 foreclosure.

21 This appeal involves two of the many proceedings that followed. 2:23-cv-01827 Dkt. #  
22 16 (consolidating two appeals).

1 A. The Bankruptcy Proceeding

2 On May 18, 2023, Wilson filed a Chapter 13 petition for bankruptcy. 2:23-bk-10919  
 3 Dkt. # 1. Chase and the Chapter 13 Trustee (Trustee) filed objections to confirmation of  
 4 Wilson's Chapter 13 plan. *Id.* at Dkt. ## 24; 28. On August 1, 2023, the Trustee also filed a  
 5 motion to dismiss. *Id.* at Dkt. # 29. On August 2, 2023, Wilson filed an objection to Chase's  
 6 proof of claim. *Id.* at Dkt. # 33. Wilson then amended his objection. *See e.g., id.* at Dkt. # 82.  
 7 Wilson's arguments in his objection included: (1) whether Quality was a qualified successor  
 8 trustee; and (2) whether the statute of limitations period had run on the Wilsons' promissory note  
 9 and deed of trust. These arguments were raised again in the adversary proceeding, described  
 10 *infra* Section II.B. 2:23-ap-1073 Dkt. # 102 at 12.

11 On November 3, 2023, the bankruptcy court overruled Wilson's objection to Chase's  
 12 proof of claim and allowed in full Chase's claim (Claim Order). 2:23-bk-10919 at Dkt. # 89. On  
 13 November 16, 2023, Wilson filed a motion for reconsideration of the Claim Order, which the  
 14 bankruptcy court denied the next day. *Id.* at Dkt. ## 97; 100. On November 27, 2023, the  
 15 bankruptcy court continued the Trustee's motion to dismiss and required Wilson to make a  
 16 payment of \$104,923 by December 15, 2023. *Id.* at Dkt. # 108. The bankruptcy court's  
 17 continuance order stated that if Wilson failed to make this payment, the Trustee could submit an  
 18 ex parte order to dismiss the case. *Id.* On December 22, 2023, the bankruptcy court found that  
 19 Wilson failed to make the required payment and dismissed the case. *Id.* at Dkt. # 122.

20 Wilson timely appealed the Claim Order and order denying Wilson's motion for  
 21 reconsideration of the Claim Order.<sup>2</sup> *Id.* at Dkt. # 111.

---

23 <sup>2</sup> As for the timeliness of Wilson's appeal of the November 27, 2023, order continuing the  
 24 Trustee's motion to dismiss and the December 22, 2023, order dismissing his bankruptcy case, see *infra*  
 Section IV.A.1.

1 B. The Adversary Proceeding

2 On April 28, 2023, the Wilsons sued Chase and Quality (collectively, Defendants) in  
3 Snohomish County Superior Court, seeking damages and injunctive and declaratory relief. 2:23-  
4 ap-1073 Dkt. # 1-2 at 4. The Wilsons sought declaratory judgments, claiming that: (1) the  
5 Washington Deed of Trust Act (DTA), RCW Chapter 61.24, violates both Article 1, Section 23,  
6 of the Washington Constitution, and Article 1, Section 10, Clause 1, of the United States  
7 Constitution by impairing the Wilsons' contract rights; (2) the statute of limitations period had  
8 run on Defendants' rights to collect all or a portion of the debt; and (3) the nonjudicial  
9 foreclosure at issue in this litigation is void. *Id.* at Dkt. # 1-1 at 44. The Wilsons also claimed  
10 that Defendants violated the Washington Consumer Protection Act (CPA), RCW Chapter 19.86,  
11 by attempting to collect time-barred debt and sought damages and a permanent injunction  
12 prohibiting Defendants from collecting on the debt. *Id.*

13 On July 6, 2023, Chase filed a motion to dismiss the Wilsons' complaint, which Quality  
14 joined, and a request for judicial notice in support of the motion. *Id.* at Dkt. ## 19–21. The case  
15 was removed to another court in this District and then transferred to the bankruptcy court. *Id.* at  
16 Dkt. ## 1; 36.

17 After the Claim Order was issued in the bankruptcy proceeding (which proceeded  
18 concurrently with the adversary proceeding), the bankruptcy court held a hearing and filed on  
19 December 18, 2023, an order granting in part and denying in part the motion to dismiss. *Id.* at  
20 Dkt. # 44. The order granted in part the motion and dismissed without leave to amend the  
21 Wilsons' request for declaratory judgment that the nonjudicial foreclosure in this litigation was  
22 void because the DTA violates the Washington and United States Constitutions. *Id.* The order  
23 denied in part the motion without prejudice as to the Wilsons' CPA claims based on the statute  
24 of limitations. *Id.* The order granted the request for judicial notice of documents from the

1 Washington Secretary of State's website supporting the proposition that Quality had a resident  
2 corporate officer during the time relevant to the litigation. *Id.* at Dkt. ## 44; 102 at 8. But the  
3 bankruptcy court declined to accept the judicially noticed documents for the truth of the matters  
4 asserted because this would have required a partial summary judgment when no motion for  
5 summary judgment had yet been filed. *Id.* at Dkt. # 102 at 8. Thus, the order denied without  
6 prejudice partial summary judgment on whether Quality was a qualified successor trustee. *Id.* at  
7 Dkt. # 44. The Wilsons filed a motion for reconsideration of the order denying in part the  
8 motion to dismiss, which was denied. *Id.* at Dkt. ## 48; 53. The Wilsons timely appealed the  
9 order granting in part the motion to dismiss. *Id.* at Dkt. # 56.

10 On January 22, 2024, Chase filed a motion for summary judgment, which Quality joined.  
11 *Id.* at Dkt. # 55, 74.

12 On April 30, 2024, the bankruptcy court, after holding a hearing, granted Chase's motion  
13 for summary judgment (Summary Judgment Order). *Id.* at Dkt. # 100. The bankruptcy court  
14 held that because the Wilsons' remaining CPA claims were based on allegations already rejected  
15 in the Claim Order (i.e., that Quality was not a qualified successor trustee and that Defendants'  
16 claims were barred by the statute of limitations), these claims were barred by issue preclusion  
17 and, in any event, lacked merit. *Id.* at Dkt. # 102 at 10–16. The bankruptcy court dismissed the  
18 Wilsons' new claim that their obligation to repay the full loan was suspended because the  
19 Wilsons had not raised this claim earlier in the proceedings and, even if they had done so, this  
20 claim lacked merit. *Id.* at 16–18.

21 The Wilsons filed a motion for reconsideration of the Summary Judgment Order, which  
22 was denied. *Id.* at Dkt. # 103, 105. The Wilsons timely appealed the order granting the motion  
23 for summary judgment. 2:23-cv-01827, Dkt. # 42.

### III

#### STANDARDS OF REVIEW

The Court reviews questions of law de novo and the bankruptcy court's factual findings for clear error. *In re Saxman*, 263 B.R. 342, 344–45 (W.D. Wash. 2001). The Court reviews de novo both a bankruptcy court's dismissal for failure to state a claim and grant of summary judgment. *In re Hemmeter*, 242 F.3d 1186, 1189 (9th Cir. 2001); *All Blacks B.V. v. Gruntruck*, 199 B.R. 970, 972 (W.D. Wash. 1996).

### IV

#### DISCUSSION

##### A. Jurisdiction

##### 1. Timeliness of Appeal

Wilson's appeals of the November 27, 2023, order continuing the Trustee's motion to dismiss and the December 22, 2023, order dismissing his bankruptcy case are untimely.<sup>3</sup> "[T]he 14-day time deadline in [Federal Rule of Bankruptcy Procedure] 8002(a) is a jurisdictional requirement that acts as an immutable constraint on [the Court's] authority to consider and hear appeals." *In re Wilkins*, 587 B.R. 97, 107 (B.A.P. 9th Cir. 2018). In his amended notice of appeal filed on January 18, 2024, Wilson contends that the Court nonetheless has jurisdiction over his appeal of the November 27, 2023, and December 22, 2023, orders regarding the dismissal of his bankruptcy case because the bankruptcy court lacked jurisdiction to issue these orders. 2:23-bk-10919 at Dkt. # 139 at 3–5. Wilson says that because the Trustee's motion to dismiss relied on the premise that the bankruptcy court would sustain Chase's claim, Wilson's

---

<sup>3</sup> Wilson does not contest the untimeliness of his attempt to appeal these orders. The bankruptcy court recognized that "the time for appeal of the dismissal order has run without an appeal having been filed," 2:23-bk-10919 Dkt. # 143 at 11, and the Trustee argued the untimeliness of Wilson's appeal of these orders in his brief. 23-cv-01827 Dkt. # 22 at 15–16.

1 appeal of the Claim Order divested the bankruptcy court of jurisdiction to rule on the Trustee's  
2 motion to dismiss. *Id.* But because Wilson filed his amended notice of appeal after the 14-day  
3 period to file an appeal had elapsed, the Court lacks jurisdiction to review Wilson's arguments  
4 about the bankruptcy court's jurisdiction to issue the November 27, 2023, and December 22,  
5 2023, orders.

6 The Court dismisses Wilson's appeal of these two orders as untimely.

7 2. The Summary Judgment Order

8 The bankruptcy court lacked jurisdiction to decide in the Summary Judgment Order two  
9 issues decided in the Claim Order: (1) whether Quality was a qualified successor trustee; and (2)  
10 whether the statute of limitations period had run on the Wilsons' promissory note and deed of  
11 trust. "The timely filing of a notice of appeal to either a district court or bankruptcy appellate  
12 panel will typically divest a bankruptcy court of jurisdiction over *those aspects of the case*  
13 *involved in the appeal.*" *In re Sherman*, 491 F.3d 948, 967 (9th Cir. 2007) (quotation marks and  
14 citation omitted, emphasis added). Because Wilson appealed the bankruptcy court's Claim  
15 Order, the Claim Order was not a final judgment for purposes of issue preclusion. *Cf. Trulis v.*  
16 *Barton*, 107 F.3d 685, 691 (9th Cir. 1995) ("Since the plaintiffs never appealed the bankruptcy  
17 court's confirmation order, the order is a final judgment and plaintiffs cannot challenge the  
18 bankruptcy court's jurisdiction over the subject matter.").

19 The Court vacates the parts of the Summary Judgment Order pertaining to the  
20 aforementioned two issues decided in the Claim Order and remands for the bankruptcy court to,  
21 if necessary, address these issues once all proceedings regarding the Claim Order have  
22 concluded.

1 B. Qualification of Quality as Successor Trustee

2 The Court cannot conclude that Quality was a qualified successor trustee throughout the  
 3 nonjudicial foreclosure. A corporation is a trustee of a deed of trust if at least one of its officers  
 4 is a Washington resident. RCW 61.24.010(1)(a). If the trustee becomes incapable of serving as  
 5 trustee, “the beneficiary shall appoint a trustee or a successor trustee,” and it is “[o]nly upon  
 6 recording the appointment of a successor trustee” that the successor trustee is vested with all  
 7 powers of the original trustee. RCW 61.24.010(2).

8 Wilson says that Quality is not a qualified successor trustee because the King County  
 9 Superior Court issued a finding of fact in *Hooker v. Bank of America, N.A.* that, “During 2013  
 10 and into 2014, no corporate officer of Quality resided in the State of Washington” and that Sierra  
 11 Herbert-West, who was then employed by Quality as an assistant secretary, “was not a corporate  
 12 officer of Quality.” 2:23-cv-01827 Dkt. # 21-1 at 105. In its hearing for the Claim Order, the  
 13 bankruptcy court quoted at length the Washington Court of Appeals’ later decision in *Winters v.*  
 14 *Quality Loan Serv. Corp. of Washington, Inc.*, which holds that Herbert-West qualified as a  
 15 corporate officer of Quality because Quality’s bylaws “designate assistant secretaries as  
 16 corporate officers with the authority to execute documents in a nonjudicial foreclosure for  
 17 [Quality].” 454 P.3d 896, 906–07 (Wash. Ct. App. 2019); 2:23-bk-10919 Dkt. # 96 at 18–20.

18 The bankruptcy court concluded that Quality was a qualified successor trustee because

19 As in *Winters*, the un rebutted evidence here, including the submission of bylaws of  
 20 Quality, (Docket 85, Part 3, Exhibit A), reflect that Quality has continually had an  
 21 authorized officer residing in the state of Washington prior to and subsequent to its  
 22 appointment as successor trustee by The Bank.

23 2:23-bk-10919 Dkt. # 96 at 20.

24 Although Quality was a qualified successor trustee throughout most of the  
 nonjudicial foreclosure proceedings, it is unclear whether Quality temporarily stopped



1 being a qualified successor trustee between February 2013 and December 2013. If so,  
2 Defendants do not contest that, under RCW 61.24.010(2), Chase needed to reappoint  
3 Quality as a successor trustee.

4 *Winters* is not dispositive. There, the court held, “The undisputed record establishes  
5 [Quality] had at least one resident corporate officer in the state of Washington *throughout the*  
6 *nonjudicial foreclosure.*” 454 P.3d at 906 (emphasis added). In *Winters*, Quality was appointed  
7 as successor trustee in December 2013. *Id.* at 899–900. Here, Quality was appointed as  
8 successor trustee in October 2012. Herbert-West’s declaration in *Winters* stated that she had  
9 been a resident officer from only August 2014 through the day that the declaration was  
10 submitted. *Id.* at 901. *Winters* does not bear on whether Quality was a qualified successor  
11 trustee before December 2013.

12 The record shows that Quality was a qualified successor trustee up to February 2013.  
13 According to Quality’s bylaws, a vice president qualifies as a corporate officer. *Id.* at 907.  
14 Wilson cites several documents stating that Herbert-West was a vice president of Quality from  
15 September 2010 to February 2013, and only makes conclusory statements that Herbert-West was  
16 not a vice president of Quality during this period. *See* 2:23-cv-01827 Dkt. # 21 at 23–25.

17 But Wilson cites a February 28, 2013, Annual Report in which neither Herbert-West nor  
18 any other Washington resident employee was included in a list of “Governing people.” 2:23-cv-  
19 01827 Dkt. # 21-1 at 122. In contrast, Herbert-West is included in a similar list in a January 20,  
20 2011, Annual report, *id.* at 116, and a January 31, 2012, Annual Report, *id.* at Dkt. # 31-2 at 53–  
21 54. Defendants do not address this discrepancy, and instead only cite Robert McDonald’s  
22 declaration, which states that “Herbert-West was elected vice president in February of 2011  
23 [and] served as vice president until July of 2013.” *Id.* at Dkt. ## 31 at 27–28; 31-2 at 48. And  
24 the bankruptcy court did not specify—within an 80-page exhibit—any evidence other than

1 Quality's bylaws to conclude that there was "unrebutted evidence" to support the fact that  
2 Quality was a qualified successor trustee. 2:23-bk-10919 Dkt. # 96 at 20. Thus, the Court  
3 cannot adequately review this issue on appeal.

4 The Court vacates the bankruptcy court's Claim Order as to its holding that Quality was a  
5 qualified successor trustee and remands for further consideration of this issue. If necessary, the  
6 bankruptcy court may reach Defendants' unaddressed, alternative argument that whether Quality  
7 had a qualified successor trustee is precluded by prior litigation. *See* 2:23-bk-10919 Dkt. # 96 at  
8 18–19.

9 C. Statute of Limitations Period on the Wilsons' Promissory Note and Deed of Trust

10 The Court cannot conclude that Defendants' claims regarding the Wilsons' promissory  
11 note and deed of trust were brought within the statute of limitations period. The parties do not  
12 dispute that "[t]he commencement of a nonjudicial foreclosure proceeding tolls the six-year  
13 statute of limitations period." *Cedar W. Owners Ass'n v. Nationstar Mortg., LLC*, 434 P.3d 554,  
14 562 (Wash. Ct. App. 2019). Because Wilson's argument that the limitations period has run on  
15 the promissory note and deed of trust rests solely on his contention, discussed *supra* Section  
16 IV.B, that Quality was not qualified to initiate nonjudicial foreclosure proceedings, the Court  
17 vacates the Claim Order's holding as to Wilson's statute of limitations claim and remands the  
18 issue to the bankruptcy court.

19 The Court dismisses Wilson's appeal of the bankruptcy court's November 17, 2023,  
20 order denying Wilson's motion for reconsideration of the Claim Order as moot. Wilson does not  
21 expressly address this motion for reconsideration in his briefs on appeal, and the only issues  
22 Wilson raised in his motion for reconsideration are whether Quality was a qualified successor  
23 trustee and whether Defendants' claims regarding the Wilsons' promissory note and deed of trust  
24 were brought within the statute of limitations period. 2:23-bk-10919 Dkt. # 97 at 11. Because

1 the Court vacates and remands as to these two issues, it need not separately address Wilson's  
 2 appeal of the order denying his motion for reconsideration.

3 D. The Washington Deeds of Trust Act

4 The Wilsons do not adequately allege that the DTA impairs their contract rights in  
 5 violation of Article 1, Section 23 of the Washington Constitution or Article 1, Section 10, Clause  
 6 1 of the United States Constitution. These sections of the Washington and United States  
 7 Constitutions, which are interpreted co-extensively, prohibit Washington from passing a law that  
 8 impairs private contracts. *Washington Food Indus. Ass'n & Maplebear, Inc. v. City of Seattle*,  
 9 524 P.3d 181, 199 (Wash. 2023). A threshold question for an alleged violation of these sections  
 10 "is whether the state law has, in fact, operated as a substantial impairment of a contractual  
 11 relationship." *Id.* (quotation marks and citation omitted).

12 The Wilsons do not sufficiently allege that the DTA has substantially impaired their  
 13 promissory note and deed of trust. In 2018, the Washington state legislature replaced the word  
 14 "owner" with "holder" in a provision of the DTA that now provides that before a notice of  
 15 trustee's sale is recorded for certain properties, "the trustee shall have proof that the beneficiary  
 16 is the *holder* of any promissory note or other obligation secured by the deed of trust." RCW  
 17 61.24.030(7)(a) (emphasis added). This amendment was passed following the Washington State  
 18 Supreme Court's decision in *Brown v. Washington State Dep't of Com.*, which holds that, despite  
 19 the use of "owner" in the previous version of RCW 61.24.030(7)(a), proof that a beneficiary was  
 20 the holder of a promissory note still satisfies RCW 61.24.030(7)(a). 359 P.3d 771, 787 (Wash.  
 21 2015). The Wilsons do not adequately explain how the 2018 amendment to the DTA impairs  
 22 their deed of trust and argue only that *Brown* was wrongly decided.<sup>4</sup> But "[a] federal court  
 23

---

24 <sup>4</sup> The Wilsons make a conclusory argument in their opening brief that the terms of their deed of  
 ORDER AFFIRMING IN PART AND VACATING IN  
 PART THE BANKRUPTCY COURT'S DECISIONS -

1 applying state law must apply the law as it believes the state supreme court would apply it.”  
 2 *Stephens v. Target Corp.*, 482 F. Supp. 2d 1234, 1235 (W.D. Wash. 2007). The Washington  
 3 State Supreme Court has spoken on whether a holder of a promissory note can be a beneficiary  
 4 of a deed of trust under the DTA, and the Wilsons point to no contrary decision by the  
 5 Washington State Supreme Court or higher legal authority.

6 The Court affirms the bankruptcy court’s grant of the motion to dismiss the Wilsons’  
 7 constitutional claims.

8 E. The Washington Consumer Protection Act

9 The Court cannot conclude that there is no genuine issue of material fact as to whether  
 10 the nonjudicial foreclosure proceedings violate the CPA. To prevail on a CPA claim, “a plaintiff  
 11 must establish five distinct elements: (1) unfair or deceptive act or practice; (2) occurring in trade  
 12 or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property;  
 13 (5) causation.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533  
 14 (Wash. 1986). A violation of the DTA can constitute “an actionable claim for damages under the  
 15 CPA.” *Winters*, 454 P.3d at 903 (Wash. Ct. App. 2019) (citing *Lyons v. U.S. Bank Nat’l Ass’n*,  
 16 336 P.3d 1142, 1150 (Wash. 2014)).

17 As an initial matter, the Wilsons have not shown that they have suffered an injury  
 18 throughout the course of the nonjudicial foreclosure proceedings. The Wilsons “can satisfy the  
 19 CPA’s injury requirement with proof that [their] property interest or money is diminished as a  
 20

---

21 trust conflict with the 2018 amendment to the DTA. 2:23-cv-01827 Dkt. # 21 at 26. Defendants say that  
 22 there is no such inconsistency, citing provisions of the Wilsons’ promissory note, which state that “The  
 23 Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note  
 24 is called the ‘Note Holder,’” and the Wilsons’ deed of trust, which states that sale of the promissory note  
 “might result in a change in the entity . . . that collects Periodic Payments . . . and performs other  
 mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law.” *Id.* at  
 Dkt. # 31 at 29; *see also Brown*, 359 P.3d at 781 (citing similar language in *Brown*’s promissory note). In  
 their reply, the Wilsons do not respond to Defendants’ citations.

ORDER AFFIRMING IN PART AND VACATING IN  
 PART THE BANKRUPTCY COURT’S DECISIONS -

1 result of [a violation of the DTA], even if the expenses incurred by the statutory violation are  
 2 minimal.” *Trujillo v. Nw. Tr. Servs., Inc.*, 355 P.3d 1100, 1108 (Wash. 2015). Despite the  
 3 bankruptcy court’s holding that the Wilsons have shown no evidence to support their allegation  
 4 that they have incurred expenses in litigating the validity of the nonjudicial foreclosure  
 5 proceedings, the Wilsons do not point to any evidence on appeal. 2:23-ap-1073 Dkt. 102 at 15.

6 But the sale of the Wilsons’ home on March 8, 2024—which is undisputed—could  
 7 constitute an injury for purposes of their CPA claim. Defendants say that the sale of the  
 8 Wilsons’ home cannot establish an injury because the Wilsons never amended their pleadings to  
 9 include this fact. 2:23-cv-01827 at Dkt. # 31 at 32–33. Defendants cite *Pac. Coast Fed’n of*  
 10 *Fishermen’s Ass’ns v. Glaser*, that states that “if the complaint does not include the necessary  
 11 factual allegations to state a claim, raising such claim in a summary judgment motion is  
 12 insufficient to present the claim to the district court.” 945 F.3d 1076, 1086–87 (9th Cir. 2019)  
 13 (quotation marks and citation omitted). But in *Pac. Coast Fed’n of Fishermen’s Ass’ns*, the  
 14 Ninth Circuit was concerned with whether a plaintiff had provided notice to a defendant of “what  
 15 the plaintiff’s claim is and the grounds upon which it rests.” *See id* (quotation marks and citation  
 16 omitted). Defendants had notice of the impending sale of the Wilsons’ home. The Wilsons’  
 17 complaint alleges that the injury element of their CPA claim is met because “[u]nless the sale is  
 18 halted, Plaintiffs’ Property will be sold at public auction on May 5th because, at least in  
 19 significant part, Plaintiffs failed to pay \$275,755.24 of unenforceable, time-barred debt.” 2:23-  
 20 ap-1073 Dkt. #1-1 at 14 ¶ 4.40.

21 The bankruptcy court did not consider whether the sale of the Wilsons’ home could  
 22 constitute an injury under the CPA.<sup>5</sup> Rather than rule on this issue in the first instance, the Court

---

23  
 24 <sup>5</sup> The bankruptcy court cited a prior case involving the Wilsons and the same loan at issue in this  
 appeal, but it does not necessarily apply given the Court’s vacating and remanding of the Wilsons’ claim  
 ORDER AFFIRMING IN PART AND VACATING IN  
 PART THE BANKRUPTCY COURT’S DECISIONS -

1 vacates the Summary Judgment Order as to the Wilsons' CPA claim and remands for further  
 2 consideration of this claim along with consideration of whether Quality was a qualified successor  
 3 trustee under RCW 61.24.010(1)(a).<sup>6</sup>

4 F. Suspension of the Wilsons' Obligation to Repay the Full Loan

5 The bankruptcy court did not err in holding that the Wilsons could not raise for the first  
 6 time at summary judgment their argument that their obligation to repay the full loan was  
 7 suspended. The Wilsons misunderstand the bankruptcy court's holding that their argument was a  
 8 "new legal theory" to mean that their argument was previously unavailable under the law. 2:23-  
 9 cv-01827 Dkt. # 30 at 15. The Wilsons say that because their argument about the suspension of  
 10 their obligation to repay their full loan was supported by existing law, it cannot have been a "new  
 11 legal theory." *Id.* at 15–16. But the bankruptcy court's use of "new" means that the Wilsons'  
 12 legal theory was not raised in their complaint. It is precisely because the Wilsons could have  
 13 raised their argument about the suspension of their obligation to repay their loan that it is  
 14 procedurally improper for the Wilsons to raise it for the first time at summary judgment. *See*  
 15 *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292–94 (9th Cir. 2000); *Wasco Prod., Inc. v.*  
 16 *Southwall Techs., Inc.*, 435 F.3d 989, 992 (9th Cir. 2006) ("Simply put, summary judgment is  
 17 not a procedural second chance to flesh out inadequate pleadings." (quoting *Fleming v. Lind-*  
 18 *Waldock & Co.*, 922 F.2d 20, 24 (1st Cir. 1990)).

19  
 20  
 21 that Quality was not a qualified successor trustee. 2:23-ap-1073 Dkt. # 102 at 15–16. In *Wilson v.*  
 22 *JPMorgan Chase, N.A.*, another court in this District held that the Wilsons could not allege an injury  
 23 under the CPA because "their own failure to meet their loan obligation is the 'but for' cause of their  
 24 'damages.'" 2020 WL 885971, at \*5 (W.D. Wash. Feb. 24, 2020) (citation omitted). But if Quality was  
 not a qualified successor trustee, then the Wilsons' failure to meet their loan obligation would not be the  
 only "but for" cause of their damages. Defendants' unlawful nonjudicial foreclosure proceedings could  
 also be a "but for" cause of damages under the CPA.

<sup>6</sup> In the interest of judicial economy, this avoids forcing the Wilsons to re-file their CPA claim.


1 The Court affirms the Summary Judgment Order as to the Wilsons' claim regarding the  
2 suspension of their obligation to repay the full loan.

3 **V**

4 **CONCLUSION**

5 Given the above, the Court DISMISSES Wilson's appeals of (1) the November 27, 2023,  
6 order continuing the Trustee's motion to dismiss; (2) the December 22, 2023, order dismissing  
7 Wilson's bankruptcy case; and (3) the November 17, 2023, order denying Wilson's motion for  
8 reconsideration of the Claim Order. The Court VACATES parts of the Claim Order regarding  
9 (1) whether Quality was a qualified successor trustee; and (2) whether the statute of limitations  
10 had run on the Wilsons' promissory note and deed of trust. The Court VACATES parts of the  
11 Summary Judgment Order regarding (1) whether Quality was a qualified successor trustee; (2)  
12 whether the statute of limitations had run on the Wilsons' promissory note and deed of trust; and  
13 (3) the Wilsons' CPA claim. The Court AFFIRMS as to all other issues decided in the orders  
14 that are the subject of this appeal. The Court REMANDS the case to the bankruptcy court for  
15 further proceedings consistent with this order.

16  
17 Dated this 26th day of September, 2024.

18  
19 

20 John H. Chun  
21 United States District Judge  
22  
23  
24